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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,668	08/31/2001	Mehran Bashiri	S63.2-9867	3795
490 7590 02/06/2008 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344			EXAMINER COMSTOCK, DAVID C	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 02/06/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/944,668

Applicant(s)

BASHIRI ET AL.

Examiner

David Comstock

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 5,16-29,31,32 and 43 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41,42,44 and 45 is/are allowed.
- 6) ☒ Claim(s) 1-4,6-15,30 and 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-15, 30 and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter (2002/0107560) in view of Lock et al. (5,591,223).

Richter discloses a stent (1) having a longitudinal axis comprising: a non-woven tubular element comprising a plurality of interconnected struts (FIG. 3, FIG. 4) which form at least one continuous pathway which extends all the way around the longitudinal axis, the interconnected struts having an outside surface facing outside the stent, an inner surface facing the longitudinal axis, and a side portion there between, the side portion having a thickness defined by the radial distance between the outer surface and the inner surface; the stent further comprising at least one of the struts being a frangible temporary strut (4), the frangible temporary strut restraining at least two of the interconnected struts from self-expansion, at least a portion of the stent constructed and arranged to self-expand upon breaking of the at least one frangible temporary strut (paragraph 0009), the thickness of a portion of the frangible temporary strut being substantially narrower than the thickness of any other portion of the frangible temporary strut (paragraphs 0020, 0026). Richter discloses that the frangible temporary strut is

constructed from a different material than the interconnected struts (paragraphs 0021,0022,0026). Richter discloses the claimed invention except for explicitly disclosing radial self-expansion. Lock et al. disclose a stent 10 comprising frangible portions, e.g. 22, that restrain the stent from self-expansion until re-expansion may be necessary to accommodate vessel change (see, e.g. Figs. 2 and 3 and col. 1, lines 7-11 and col. 2, lines 14-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the stent of Richter with frangible portions that restrain the stent from self-expansion until re-expansion may be necessary, in view of Lock et al., in order to accommodate vessel change. It would have been further obvious to have provided the device with any of numerous ranges of rupture pressures, since it has been held that where the general conditions of a claim are disclosed in the prior art, as here, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

### ***Response to Arguments***

Applicant's arguments filed 10 October 2007 have been fully considered but they are not persuasive.

It is first noted that the motivation to combine was explicitly stated in the rejection, namely "to accommodate vessel change." Next, the struts in Richter are integrally attached to the stent and can be considered to be thicker at the integral attachment point as they are stronger at that point due to the connection means and/or strut portion of the stent. This is a minor point in any event because they are designed

to rupture just as with Applicant's necked design, and both would be obvious known equivalent structures that a person of ordinary skill in the art could be expected to employ. Finally, there would be no reason to use a balloon with the device of Richter, since Lock was relied upon for the teaching of radial expansion and not for the balloon expansion. Even if the balloon were incorporated, it would only make the ultimate rupturing more likely to occur and therefore, make the device more reliable. It is noted that the step of inserting the device need not be separate from the step of inflating the balloon catheter in combined devices.

***Allowable Subject Matter***

Claims 41, 42, 44 and 45 are allowable over the prior art of record. ,

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

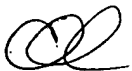
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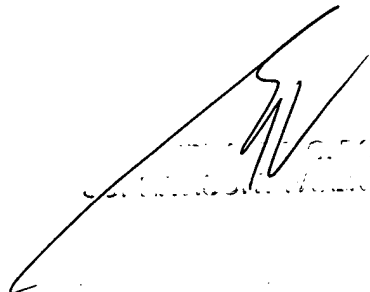
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock



DAVID COMSTOCK  
EXAMINER